

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CORINNE SASO,  
RICHARD CHALMERS and  
EDWARD JOHN GIBLIN

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Appeal No. 2005-1328  
Application No. 09/734,792

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ON BRIEF

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Before KIMLIN, GARRIS and WARREN, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-13, 15-17, 19-25, 27 and 28.

Claim 1 is illustrative:

1. A combination of two or more packages juxtaposed to form a unit, said unit being shrink wrapped in two or more films on opposite film sides of said unit, wherein at least one of said films is opaque and at least one of said films is clear.

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The examiner relies upon the following references as evidence of obviousness:

Limousin	4,586,312	May 06, 1986
Lundquist et al. (Lundquist)	4,720,410	Jan. 19, 1988
Tsuchiya	5,067,612	Nov. 26, 1991

Appellants' claimed invention is directed to a combination comprising two or more packages that are shrink wrapped to form a unit wherein one of the films of the shrink wrapping is opaque while another film is clear. According to appellants' specification, "[t]he opaque film is sufficiently resistant to the transmission of light such that UPC bar codes present on the individual packages cannot be read through the film by bar code reading machines" (page 5, second paragraph). The specification explains that "use of the opaque film prevents the bar code reading machine from inadvertently reading one of the bar codes for the individual packages and thereby falsely crediting the manufacturer with shipment only of an individual package rather than the multi-package unit" (id.).

Appealed claims 1, 3, 4, 6, 7, 10, 12, 13, 15-17, 22, 24, 25, 27 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Limousin in view of Lundquist. Claims 2, 5, 8, 9, 11 and 19 stand rejected under 35 U.S.C. § 103(a) as being

unpatentable over the stated combination of references further in view of Tsuchiya. Also, claims 20, 21 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Limousin in view of Tsuchiya.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

Appellants submit at page 12 of the brief that "[a]ll claims stand or fall together for all grounds of rejection." Accordingly, the claims rejected over Limousin in view of Lundquist stand or fall together with claim 1, whereas claims 2, 5, 8, 9, 11 and 19 stand or fall together with claim 2. Also, claims 21 and 23 stand or fall together with claim 20.

We consider first the rejection of claim 1 over Limousin in view of Lundquist. There is no dispute that Limousin discloses the presently claimed combination of two or more packages

juxtaposed to form a unit with the unit being shrink wrapped in two or more films on opposite film sides of the unit. As appreciated by the examiner, Limousin does not teach that one of the films is opaque and the other is clear. However, we agree with the examiner that Lundquist evidences that it was known in the art to shrink wrap a combination of opaque and clear films when the opacity of one of the films is desired. Accordingly, although Limousin is silent with respect to the clarity or opacity of the shrink wrapped films, we are confident that one of ordinary skill in the art would have found it obvious to make one of the films clear for allowing observation of desired portions of the packages being shrink wrapped, while making another film opaque to obscure or hide other portions of the objects. In our view, the problem solved by appellants, inadvertent reading of bar codes on individual packages, would have been readily recognized by one of ordinary skill in the art, and the solution of utilizing an opaque film would have been readily apparent to the artisan. In re Ludwig, 353 F.2d 241, 244, 147 USPQ 420, 421 (CCPA 1965). Consequently, it follows that we find that the subject matter of claim 1 would have been obvious over Limousin alone.

As for separately rejected claim 2, we find that it would have been obvious for one of ordinary skill in the art to employ the known expedient of gripping openings on the ends of Limousin's shrink wrapping. We concur with the examiner that figure 13 of Tsuchiya evidences the obviousness of such gripping openings. We are satisfied that one of ordinary skill in the art would need only to resort to routine experimentation to determine the optimum locations for providing the gripping openings. While appellants contend that Limousin does not teach the claimed placement of perforations and apertures, claim 2 fails to recite any perforations. Also, the specific location of Limousin's perforations are contingent upon the placement of the wrapping on the conveyor during heating.

As for separately argued claim 20, appellants present the same arguments discussed above. Again, it is our view that it would have been obvious for one of ordinary skill in the art to determine the optimum location of perforations and gripping openings in shrink wrappings of the type disclosed by Limousin. To the extent that Limousin teaches a specific advantage for

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locating the perforations and openings, it is well settled that it is a matter of obvious for one of ordinary skill in the art to eliminate or modify a feature of the prior art along with its attendant advantage. In re Thompson, 545 F.2d 1290, 1294, 192 USPQ 275, 277 (CCPA 1976); In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975).

As a final point, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.


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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a)(1)(iv).

AFFIRMED

  
EDWARD C. KIMLIN )  
Administrative Patent Judge )

  
BRADLEY R. GARRIS )  
Administrative Patent Judge )

  
CHARLES F. WARREN )  
Administrative Patent Judge )

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